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SENATE BILL 1112

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JOSEPH A. FIDEL

AN ACT

RELATING TO RURAL INFRASTRUCTURE; AMENDING THE RURAL
INFRASTRUCTURE ACT; TRANSFERRING ADMINISTRATION OF THE ACT AND
THE RURAL INFRASTRUCTURE REVOLVING LOAN FUND TO THE NEW MEXICO
FINANCE AUTHORITY; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 75-1-2 NMSA 1978 (being Laws 1973,
Chapter 333, Section 2, as amended) is amended to read:

"75-1-2. DEFINITIONS. -- As used in the Rural Infrastructure
Act:

~~[A. "division" means the environmental improvement
division of the health and environment department]~~

A. "authority" means the New Mexico finance
authority;

B. "board" means the environmental improvement

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1 board;

2 C. "department" means the department of environment;

3 [~~C.~~] D. "fund" means the rural infrastructure
4 revolving loan fund;

5 [~~D.~~] E. "local authority" means any incorporated
6 city, town or village, county, mutual domestic association,
7 public water cooperative association or sanitation district
8 whose water supply facility serves a population of less than ten
9 thousand;

10 [~~E.~~] F. "operate and maintain" means all necessary
11 activities, including but not limited to replacement of
12 equipment or appurtenances to assure the dependable and
13 economical function of a water supply facility in accordance
14 with its intended purpose; and

15 [~~F.~~] G. "water supply facility" includes but is not
16 limited to the source of supply of water, pumping equipment,
17 storage facilities, transmission lines, treatment works and
18 distribution systems. "

19 Section 2. Section 75-1-3 NMSA 1978 (being Laws 1973,
20 Chapter 333, Section 3, as amended) is amended to read:

21 "75-1-3. ~~FUND CREATED--ADMINISTRATION--EMERGENCY FUND.--~~

22 A. A special fund is created at the authority to be
23 known as the "rural infrastructure revolving loan fund". Money
24 appropriated to the fund or to the [~~division~~] authority to carry
25 out the provisions of the Rural Infrastructure Act may be used

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1 to make loans and grants to local authorities, individually or
2 jointly, for water supply facilities. Appropriations made to
3 the fund but not expended at the end of the fiscal year for
4 which appropriated shall not revert to the general fund but
5 shall accrue to the credit of the fund. Earnings on the balance
6 in the fund shall be credited to the fund. In addition, when
7 the proceeds from the issuance of severance tax bonds
8 appropriated to the fund are deposited in the state treasury,
9 interest earned on that money during the period from deposit in
10 the state treasury until the actual transfer of the money to the
11 fund shall be credited to the fund.

12 B. Ten percent of any appropriation to the fund or
13 to the [~~division~~] authority to carry out the provisions of the
14 Rural Infrastructure Act shall be set aside for emergency grants
15 and loans pursuant to Section 75-1-5 NMSA 1978.

16 C. All water supply facilities shall be designed in
17 compliance with the engineering requirements established by the
18 board after consulting with and considering the recommendations
19 of the professional engineering societies operating in New
20 Mexico. The [~~board~~] department shall also establish, by
21 regulations, guidelines for the ranking of projects for top
22 priority based on public health needs.

23 D. The [~~division~~] authority shall administer the
24 fund and shall make grant and loan disbursements in accordance
25 with the Rural Infrastructure Act. The [~~board~~] authority shall

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1 adopt regulations to govern the application procedure and
2 requirements for disbursing grants and loans under the Rural
3 Infrastructure Act, including requirements consistent with the
4 purpose of the act for determining the eligibility [~~and~~
5 priority] of local authorities [~~for~~] to receive such grants and
6 loans. The [~~division~~] authority shall coordinate its
7 application procedures and funding cycle pursuant to the New
8 Mexico Community Assistance Act.

9 E. Receipts from the repayment of loans, including
10 loans approved by the state board of finance pursuant to Section
11 75-1-5 NMSA 1978, shall be deposited in the fund by the
12 [~~division~~] authority, including receipts from the repayment of
13 loans made pursuant to appropriations to carry out the purposes
14 of the Water Supply Construction Act made prior to the effective
15 date of the Rural Infrastructure Act.

16 F. Loans and grants made pursuant to the provisions
17 of the Rural Infrastructure Act shall not be used by the local
18 authority on any project constructed in fulfillment or partial
19 fulfillment of requirements made of a subdivider by the
20 provisions of the Land Subdivision Act or the New Mexico
21 Subdivision Act.

22 G. The balance of the fund at the state treasurer
23 shall be transferred on the effective date of this 1997 act to
24 the authority.

25 H. All loans and grants held by the department shall

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1 be transferred on the effective date of this 1997 act to the
2 authority."

3 Section 3. Section 75-1-4 NMSA 1978 (being Laws 1973,
4 Chapter 333, Section 4, as amended) is amended to read:

5 "75-1-4. CONDITIONS FOR GRANTS AND LOANS. --

6 A. Grants and loans shall be made only to local
7 authorities that:

8 (1) agree to operate and maintain the water
9 supply facilities so that the facilities will function properly
10 over the structural and material design life, which shall not be
11 less than twenty years;

12 (2) require the contractor of the construction
13 project to post a performance and payment bond in accordance
14 with the requirements of Section 13-4-18 NMSA 1978;

15 (3) provide a written assurance, signed by an
16 attorney, that the local authority has proper title, easements
17 and rights-of-way to the property upon or through which the
18 water supply facility proposed for funding is to be constructed
19 or extended;

20 (4) meet the requirements of the financial
21 capability set by the ~~[division]~~ authority to assure sufficient
22 revenues to operate and maintain the facility for its useful
23 life and to repay the loan;

24 (5) pledge sufficient revenues for repayment of
25 the loan, provided that such revenues may by law be pledged for

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1 that purpose; and

2 (6) agree to properly maintain financial
3 records and to conduct an audit of the project's financial
4 records.

5 B. Except as otherwise provided in the Rural
6 Infrastructure Act, a loan shall be for a period of time not to
7 exceed twenty years with an annual subsidized interest [~~rate of~~
8 ~~five percent on the unpaid balance, unless, in order to comply~~
9 ~~with federal arbitrage requirements, the state board of finance~~
10 ~~upon issuance and sale of bonds appropriated to the fund~~
11 ~~specifies a lower rate of interest on such loan to match the~~
12 ~~interest rate upon bonds funding the project, and] to be
13 determined by the authority periodically and provided that it
14 does not exceed fifty percent of the average interest of non-
15 taxable bonds issued the previous year by the authority for the
16 construction of water system improvements. The actual procedure
17 to determine interest rates shall be promulgated under the
18 authority's regulation. A loan shall not exceed five hundred
19 thousand dollars (\$500,000) in any one year. The repayment of
20 loans shall be in equal annual installments beginning one year
21 after completion of the project. The repayment of the interest
22 on the loan accumulated during the design and construction of a
23 project may be included in the final loan amount, but it shall
24 not be counted in determining the maximum loan amount.~~

25 C. No loan recipient eligible to receive a grant

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1 under the Rural Infrastructure Act shall receive grants in any
2 one year totaling more than two hundred thousand dollars
3 (\$200,000).

4 D. The maximum assistance, including both loans and
5 grants, which a local authority may receive under the Rural
6 Infrastructure Act is five hundred thousand dollars (\$500,000).

7 E. Plans and specifications for a water supply
8 facility construction project shall be approved by the
9 [division] authority before grant or loan disbursements to pay
10 for construction costs are made to a local authority. Interim
11 loan disbursements to pay for engineering and other professional
12 services may be made by the [division] authority prior to the
13 approval of the plans and specifications.

14 F. Privately owned water supply facilities are not
15 eligible for assistance under the Rural Infrastructure Act.

16 G. Grants and loans shall be made only for eligible
17 items. Eligible items include but are not limited to the costs
18 of engineering feasibility reports, contracted engineering
19 design, inspection of construction, special engineering
20 services, archaeological surveys and contracted construction.
21 The costs of water rights, land, system acquisition, easements
22 and rights-of-way, refinancing of delinquent program loans,
23 legal costs and fiscal agents' fees are eligible items only for
24 loan funds. Local authority administrative costs shall not be
25 included as eligible items.

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1 H. In the event the local authority fails to make
2 the prescribed loan repayment, the [~~division~~] authority is
3 authorized to set water user rates in the area of the local
4 authority's jurisdiction in order to provide sufficient money
5 for repayment of this loan and proper operation and maintenance.

6 I. In the event of default, the authority shall have
7 the power to enforce its rights by suit or mandamus or may use
8 all of the available remedies under state law."

9 Section 4. Section 75-1-5 NMSA 1978 (being Laws 1987,
10 Chapter 175, Section 4, as amended) is amended to read:

11 "75-1-5. EMERGENCY LOANS AND GRANTS. --Ten percent of the
12 proceeds of each severance tax bond issuance or other
13 appropriation for the purpose of carrying out the provisions of
14 the Rural Infrastructure Act shall be reserved for emergencies
15 and shall be allocated by the [~~division~~] authority only upon
16 approval of the state board of finance. The department shall
17 make the recommendation to the state board of finance on any
18 emergency request. This amount shall not be deposited in the
19 fund but shall be kept in a separate account by the authority
20 and shall be allocated only for emergency loans and grants.
21 Emergency loans and grants shall be made in accordance with the
22 applicable provisions for loans pursuant to the Rural
23 Infrastructure Act; provided that a grant shall not exceed two
24 hundred thousand dollars (\$200,000). At the end of the third
25 quarter of each fiscal year, the unexpended balance of the

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1 reserved amount may be transferred by the [~~division~~] authority
2 to the fund for use in accordance with the Rural Infrastructure
3 Act. "

4 Section 5. Section 75-1-6 NMSA 1978 (being Laws 1988,
5 Chapter 28, Section 7, as amended) is amended to read:

6 "75-1-6. AVERAGE RESIDENTIAL USER COST REDUCTION GRANTS
7 AND ZERO PERCENT LOANS. --

8 A. No more than twenty-five percent of the proceeds
9 of each severance tax bond issuance or other appropriation for
10 the purpose of carrying out the provisions of the Rural
11 Infrastructure Act shall be reserved for average residential
12 user cost reduction grants [~~or zero percent loans~~] to reduce
13 average residential user cost to a reasonable level for eligible
14 financially needy loan recipients whose water supply facilities
15 serve less than three thousand persons.

16 B. Average residential user cost reduction grants
17 [~~and zero percent loans~~] shall be allocated by the [~~division~~]
18 authority in accordance with the provisions for grants [~~and~~
19 ~~loans~~] pursuant to the Rural Infrastructure Act, provided that
20 an average residential user cost reduction grant [~~or zero~~
21 ~~percent loan~~] shall not exceed two hundred thousand dollars
22 (\$200,000). Such grants [~~and loans~~] shall reduce only the
23 principal and interest portion of the average residential user
24 cost to a reasonable cost as determined by the [~~division~~]
25 authority.

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1 C. ~~[A zero percent loan or]~~ An average residential
2 user cost reduction grant shall be approved by the ~~[division]~~
3 authority when, after construction bids have been received, the
4 following conditions have been met by the local authority whose
5 average residential user costs are in need of reduction:

6 (1) the construction project is designed using
7 the most cost effective and dependable option;

8 (2) the system is designed with adequate built-
9 in expansion capacity;

10 (3) other sources of grant funds have been
11 sought and are not available in a timely manner;

12 (4) the project cannot feasibly be reduced in
13 scope or phased so as to bring it within available loan funds
14 and within reasonable user cost; and

15 (5) the local authority's average residential
16 user cost in need of the reduction is at least eighteen dollars
17 (\$18.00) per month.

18 D. The authority may request a separate
19 appropriation from the legislature to be used only for average
20 user cost reduction grants and not subject to the limitations of
21 Subsection A of this section; provided that the grants are
22 leveraged with repayment money deposited in the fund and
23 allocated to local authorities as loans by the authority in any
24 one year."

25 Section 6. EFFECTIVE DATE. --The effective date of the

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1 provisions of this act is July 1, 1997.

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